

ROY L. ANDES, Administrator of the
Estate of Marianne McKay Andes, Deceased,

Plaintiff,

v.

UNITED STATES OF AMERICA

Defendant

V.

3. On August 5, 2019, the Court dismissed the claims Roy Andes brought on his own behalf because “in an action under Virginia law seeking to recover for the wrongful death of a married

woman, no action for such injury, expenses, or loss of services or consortium can be maintained by the husband.” Order (8/5/19) at 14, ECF No. 14. The Court did not dismiss the claims brought on behalf of the Estate, but ordered Roy Andes to file documents showing his appointment as the administrator of the Estate. *Id.* at 15. In addition, because “the personal representative may not file the action without a lawyer if there are other beneficiaries or creditors of the estate,” the Court ordered Roy Andes to obtain a lawyer if he was not the sole beneficiary of the Estate or if there were any creditors of the Estate. *Id.*

4. On August 22, 2019, Roy Andes, applied for and was appointed to be Administrator of the Estate of Marianne Andes, in the Bristol Circuit Court, Virginia, under the provisions of Virginia Code § 64.2-454.

5. In November 2019, attorney Mark T. Hurt, Esquire, and The Law Offices of Mark T. Hurt began representing Roy Andes in his role as Administrator of the Estate of Marianne Andes in the prosecution of this action, and later, in his individual role as a statutory beneficiary, pursuant to Virginia Code section 8.01-53, of the settlement proceeds that might result from the claims asserted in this action.

6. Marianne Andes is survived by her husband, Roy Andes, her daughter, Michelle Roche, and her three sons, Michael Andes, Mark Andes, and Matthew Andes. These are the sole beneficiaries pursuant to Virginia Code § 8.01-53.

5. Without admitting liability, the United States has agreed to pay, contingent upon Court approval, the amount of Two Hundred Twenty Thousand Dollars (\$220,000.00) in full settlement and discharge of all of Plaintiff’s claims in this matter.

6. The foregoing payment is conditioned upon the approval by this Court, in full and final discharge of any and all claims, including any claim for attorneys’ fees, costs, and interest, which were or could have been asserted for the death of Marianne Andes against the United States, or against any other employees or independent contractors either now or in the past employed or

contracted by the United States.

7. The parties acknowledge that this settlement is a compromise of a disputed claim and that the payment is not to be construed as an admission on the part of the United States of any liabilities for the damages sustained by the Decedent and the statutory beneficiaries.

8. Plaintiff and the United States agree that this settlement is fair and reasonable to the parties.

9. Plaintiff has been represented by Mark T. Hurt, Esquire, and The Law Offices of Mark T. Hurt, and all attorneys' fees, costs, and expenses incurred in this matter will be paid from the compromise settlement. Plaintiff's counsel's total fee is \$55,000.00, which is 25% of the settlement proceeds, as agreed with Plaintiff and as allowed by statute. Costs advanced by Plaintiff's attorney or otherwise incurred for representation of Plaintiff total \$12,066.33.

10. Medicare has issued a written confirmation that it asserts no lien or other claim on the proceeds of this settlement.

11. Because there is no agreement among the statutory beneficiaries specified in paragraph 4 as to the distribution of the settlement proceeds, the Court should hear testimony and consider other evidence on the issue of how the net settlement proceeds should be distributed among the statutory beneficiaries and render a decision accordingly.

12. There are no other parties or entities who are entitled to any distribution of any recovery that may be had in this action.

13. Upon making the payments referenced in paragraph 5 above, the United States and all employees and independent contractors that could be implicated in connection with the Plaintiff's claims in this matter, will be released from any and all liability and claims arising from the injuries to and the death of Marianne Andes, and this matter be dismissed with prejudice.

WHEREFORE, the United States of America and Roy Andes, Administrator of the Estate of

Marianne Andes, by counsel, respectfully move the Court to convene a hearing for entry of an order to approve this settlement, dismiss the United States with prejudice, award Plaintiff's attorney his contractual fee and advanced costs out of the settlement, hear testimony and evidence on the proper distribution of the net settlement proceeds among the statutory beneficiaries, order distribution as the Court determines is appropriate, and grant such other relief as the Court deems necessary and appropriate.

Respectfully submitted,

CHRISTOPHER R. KAVANAUGH
United States Attorney

Date: March 10, 2022

/s/ Sara Bugbee Winn
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Date: March 10, 2022

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CERTIFICATE OF SERVICE

I certify that on March 10, 2022, I caused the foregoing document to be filed with the Clerk of Court using the CM/ECF system which will distribute copies to all CM/ECF participants.

/s/ Sara Bugbee Winn
Assistant United States Attorney